

Global Environmental Governance for Corporate Responsibility and Accountability

Jennifer Clapp*

In the past quarter of a century, an era of rapid economic globalization, there has been a remarkable growth in both the number of transnational corporations (TNCs) and the quantity of foreign direct investment (FDI). TNCs have grown in number from 7,000 TNC parent firms in 1970 to over 65,000 in 2002. These parent firms are associated with over 850,000 foreign affiliate firms. Together, these globally linked firms make up one-tenth of world GDP and one-third of world exports.¹ Flows of FDI have grown considerably in recent decades. In 1970 the level of FDI inflows stood at US\$9.2 billion, and by 2003 it stood at US\$560 billion (down from the record breaking US\$1.49 trillion in 2000).² Given this weight of transnational investment, it is clear that TNCs are very important global actors. Because they tend to invest in sectors that are environmentally sensitive, they are especially important players in international environmental politics and policy. Though the developing world receives less than 20 percent of global FDI, it is a key source of capital for these countries and its impacts can be enormous on the economy, and the environment.³

Marian Miller was very interested in the role of corporations in global environmental governance. Her concern lay with the power of transnational corporations, in particular their ability to influence policies and environmental outcomes in the Third World. She saw this power of corporate actors as draining sovereignty away from Third World countries, and exhausting their resources.⁴ Though corporations have “greened” themselves in the course of the past 10 years by claiming to be environmentally and socially responsible via a number of voluntary corporate-based initiatives, and even by claiming to promote sus-

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1. UNCTAD 2001, 9; and UNCTAD 2002, xv and 272.
2. UNCTAD 2001, 1; World Bank 2003; and UNCTAD 2004, 1.
3. Leighton, Rohit-Arriaza, and Zarsky 2002, 3.
4. Miller 1998, 174; and Miller 2001.

tainable development in the South, they were, according to Miller, in need of being closely watched.⁵

In line with this concern, the past decade has seen a growing literature on the interface between TNCs and the environment. One strand has focused on the environmental impact of TNCs. This literature has focused on case studies that outline the practices of TNCs at the local level, especially in the developing world. Most developing countries have only put environmental regulations into place over the course of the past decade, and monitoring and enforcement has been patchy due to weak state capacity and pressure to attract investment. This literature has focused on key sectors, such as electronics, chemicals, agriculture, forestry, mining and oil exploration.⁶ Another strand of the literature has looked at the influence of business actors in global environmental governance.⁷ Much of this literature has looked at the role that transnational corporations play in influencing global treaties and their impact on governments, including those in the Global South. Corporations and corporate advocacy groups lobby governments and international treaty processes.⁸ They also use their structural power, and threat of relocation, to encourage governments to loosen regulations or to not enforce those rules on the books (encouraging a regulatory chill),⁹ as well as to influence the discourse on “sustainable development.”¹⁰ They also have enacted voluntary environmental and social codes of conduct, organized primarily through industry, such as ISO 14000, Responsible Care, and individual pledges of corporate social responsibility (CSR).¹¹ The literature on these developments has been extremely important in tracking and analyzing the roles that business actors play in shaping global environmental governance.

In this article, I argue that we must now turn our attention to another aspect of the politics of international business in global environmental governance: the evolution of formal multilateral environmental governance mechanisms designed to influence the environmental behavior of TNCs. Formal efforts to promote better environmental practices by TNCs that originate outside of corporate circles have been stepped up in recent years, alongside industry-driven efforts. Recent efforts along these lines include the UN’s Global Compact, the Organization for Economic Cooperation and Development’s (OECD) Guidelines for Multinational Enterprises, as well as calls for an international treaty on corporate accountability. While these external efforts are still voluntary, they do have the potential to become stronger if they are incorporated into a legally binding treaty, as some NGOs are currently proposing. Such an agreement would have enormous significance for the countries of the Global South,

5. Miller 1995, 37.

6. See, for example, Leighton, Roht-Arriaza, and Zarsky 2002; Clapp 2001; Miller 2001; Dauvergne 2001; and Gedicks 2001.

7. For example, Levy and Newell 2005.

8. See, for example, Newell and Paterson 1998; Levy 1997; Clapp 2001; and Rowlands 2000.

9. Clapp 2002; and Neumayer 2001.

10. Sklair 2001; Levy and Newell 2002; and Levy and Egan 1998.

11. Finger and Tamiotti 1999; Clapp 1998; and Krut and Gleckman 1998.

as it is often difficult for these countries to monitor and enforce environmental regulations, particularly in a climate of regulatory chill. An externally driven treaty could lead not only to strengthened regulations on TNCs operating in developing countries, but also to enhanced technical and financial assistance for monitoring and enforcement.

A Brief History of International Efforts to Govern TNCs

Efforts to impose some sort of external governance on TNCs are not new. Negotiations were launched on a globally applicable voluntary code of conduct for TNCs in 1977 by the UN Center for Transnational Corporations (UNCTC). This code of conduct included provisions on environmental practice and outlined rights and responsibilities of TNCs.¹² Set up in the early 1970s, the UNCTC was mandated to monitor the economic, social and environmental impact of TNCs, particularly those operating in developing countries. The idea behind the Code of Conduct was to ensure that foreign direct investment did not have adverse consequences for local communities or the environment. Negotiations on the code continued for over a decade, but it was never finalized or adopted. According to NGOs involved in the negotiation of this agreement, pressure from the US and the International Chamber of Commerce (ICC) in the early 1990s led to the dismantling of the UNCTC, just prior to the 1992 Rio Earth Summit. The UNCTC's other activities were assumed by the United Nations Commission on Trade and Development (UNCTAD), which addresses developing country trade and investment concerns.¹³ In place of the UNCTC code, the Rio Earth Summit promoted voluntary, self-regulatory initiatives developed by corporate actors themselves.

Many see the approach adopted at Rio as the product of heavy corporate presence at that event.¹⁴ The participation of industry at Rio began well in advance of the conference. In 1990, some 48 TNCs established a lobby group, the Business Council for Sustainable Development (BCSD) which became active in promoting the business perspective in the run up to Rio. The ICC was also active at the Earth Summit and in its follow up, forming the World Industry Council on the Environment (WICE) in 1992. In 1995 the two groups merged to form the World Business Council for Sustainable Development (WBCSD). Agenda 21 reflected this input from industry, endorsing private voluntary efforts on the part of business to promote sustainable development.¹⁵

At the World Summit on Sustainable Development (WSSD), held in Johannesburg, South Africa, in the fall of 2002, yet another new industry advocacy group was formed to present a common international industry position on the

12. FOE England, Wales and Northern Ireland 1998.

13. FOE England, Wales and Northern Ireland 1998; and NGO Taskforce on Business and Industry No Date a.

14. For example, Chatterjee and Finger 1994; and Finger and Kilcoyne 1997.

15. See UN 1992, *Agenda 21*, especially chapter 30.

regulation of business. This group, the Business Action for Sustainable Development (BASD) was the result of the combined efforts of the ICC and the WBCSD and represented over 150 TNCs. The BASD began to meet to strategize its position on industry's role in sustainable development a year ahead of the WSSD.¹⁶ The idea of a legally binding instrument to govern TNC practices had been floated prior to the WSSD, and a main activity of the BASD was to lobby against this proposal, promoting private voluntary measures instead.

In the course of the past decade, many TNCs, encouraged by international industry lobby groups such as WBCSD, the ICC and the BASD, have committed to adhering to the principles of corporate social responsibility (CSR) via a number of private voluntary initiatives. CSR entails a shift in businesses mission statements to include stakeholders as well as society more broadly, and it incorporates means to operationalize that shift via management auditing and reporting.¹⁷ CSR initiatives include ISO 14000 environmental management standards as a voluntary initiative with significant corporate influence, as well as those specific to certain industries, such as Responsible Care for the chemical industry, in addition to CSR initiatives designed by individual firms. The proponents of the CSR approach argue that it encourages corporations to act in ways that are both environmentally and socially sound, in large part because adhering to CSR principles makes "good business sense."¹⁸ There has been a proliferation of private and industry based CSR initiatives in recent years. Groups such as the BASD highlight the role of the Global Reporting Initiative (GRI) as the key governance structure for business with regard to CSR.¹⁹ The GRI was originally an industry driven initiative for corporate reporting on CSR activity. The GRI is now an independent body, which collaborates with the UN Environment Programme (UNEP) and cooperates with the UN on the Global Compact, discussed below.²⁰

While industry interest and activity around CSR has been extremely active in recent years, many NGOs have remained skeptical of their motives, and of the ability of this type of private, industry led self-regulation to lead to significant environmental improvements, particularly in poor countries.²¹ This concern has prompted some groups to revive the idea of an external, internationally agreed upon corporate code of conduct to govern TNCs. Some would like to see such a code in the form of a legally binding international agreement. Those pressing this position argue that there is a difference between corporate *responsibility* and corporate *accountability*. Corporate responsibility refers to recognition by industry of their role in sustainable development, as well as the voluntary and self-regulatory efforts they adopt. Corporate accountability is a much stronger no-

16. Rutherford 2003, 14.

17. Leighton, Roht-Arriaza, and Zarsky 2002, 8.

18. Holme and Watts 2000.

19. Moody Stuart 2002, 120.

20. GRI website: www.globalreporting.org.

21. Finger and Kilcoyne 1997.

tion. It implies legal obligations by corporations to promote sustainable development and to provide compensation when such obligations are breached.²²

The difference between private industry-led initiatives and an externally agreed code of conduct is an important one to consider in determining whether firms will actually change their practices. A key study by UNCTAD found that the most influential motivating factor for TNCs to develop corporate environmental policies was government-based laws and regulations.²³ Because TNCs wish to avoid being held legally or financially liable for damages linked to their operations, they tend to be motivated to act by regulations which set out sanctions for breaches of the law. Given that laws and regulations are such strong motivators for firms to clean up their practices, many see that stronger state-based regulations are extremely important, and that an externally negotiated global set of rules is vital for improving environmental practices of TNCs, particularly those operating in developing countries where regulations tend to be weaker and/or harder to enforce. Recent years have seen a number of initiatives for externally based sets of “soft” rules (including guidelines and principles) for TNCs, all of which are still voluntary, but which originated outside of industry itself. They are important to examine, as they have the potential to become legally binding in future as part of some sort of global treaty.

Multilateral Efforts to Govern TNCs from the Outside

The Global Compact

The Global Compact (GC) is a pact between the United Nations and global businesses on corporate behavior. Proposed by UN Secretary General Kofi Annan in early 1999, the pact was officially launched in July 2000. The GC was a challenge to global corporations to demonstrate their commitment to social and environmental goals. It asks corporations to promise to become responsible corporate citizens, and asks them to adhere to ten specific principles, covering social, environmental and human rights, and to incorporate these principles into their mission statements as well as their actual operations.²⁴ The main objectives of the GC are to “mainstream” environmental and social issues into operations of business, and to encourage business to take action in support of UN goals. In the area of the environment, corporations are asked to support the precautionary approach, to undertake initiatives to promote environmental responsibility, and to develop and diffuse environmentally friendly technologies.²⁵

22. NGO Taskforce on Business and Industry No Date b; Bruno and Karlner 2002a; and FOEI 2001.

23. UNCTAD 1993, 38.

24. UN Global Compact website: www.globalcompact.org

25. UN No Date.

While technically an idea originating outside of industry itself, and overseen by the UN, the Global Compact is still voluntary, solicits industry input, and does not call for accountability on the part of firms. Rather, it promotes corporate responsibility instead of strict accountability. For these reasons it has been widely criticized by NGOs as being inadequate to elicit sufficient change in business practices. Some NGOs have charged that TNCs are using the GC as a way to promote links with the UN, without having to do much in practice. This may be great for these firms' public relations because it gives the appearance of adherence to externally driven rules, but it still relies on voluntary improvements in environmental and social practices without any monitoring, and with no legal liability if they fall short on their promises.²⁶ Further, many see the compact as representing ". . . a smuggling of a business agenda into the United Nations."²⁷

OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises were first established in 1976. These guidelines are a voluntary set of standards promoted by OECD countries, for TNCs which are headquartered in and/or operating in OECD countries. These guidelines cover a wide range of issues such as information disclosure by TNCs, taxation, labor relations and the environment. Over the years, the guidelines have been revised periodically, with a chapter on environmental protection added in 1991 and updated in 2000. These latter updates included extraterritorial application of the guidelines for TNCs headquartered in OECD countries but operating in non-OECD countries.²⁸

The environmental chapter of the OECD Guidelines encourages member states to promote already existing industry-driven environmental management standards for CSR. At the same time, however, they also ask members to encourage their TNCs to adopt "measurable objectives, and where appropriate, targets for improved environmental performance," as well as "regular monitoring and verification of progress" on environmental and other measures. The guidelines also call for consultation with affected communities as well as improved access to information on the environmental activities of TNCs. The use of a precautionary approach is also endorsed.²⁹ Other portions of the guidelines also touch on environmental issues, such as the portions on disclosure of information.

At the same time that these guidelines are meant to strengthen existing measures taken by firms, such as CSR initiatives, they also go a bit further in that they promote improved environmental performance rather than just improved

26. CEO No Date.

27. Bruno and Karlner 2002a, 1.

28. FOE Netherlands 2002; FOE England, Wales and Northern Ireland 1998; and OECD 2000.

29. OECD 2000.

management. Still, some environmental groups have attacked the guidelines for being weak.³⁰ A principal critique is that the voluntary nature of the guidelines means that no legal obligations are placed on TNCs. Rather, they are as their name implies—merely guidelines that OECD member countries are to encourage their TNCs to follow on a voluntary basis. For this reason, environmental NGOs have been skeptical of the ability of the OECD guidelines in their current form to engender true change in TNC environmental practices.

Steps Toward a Legally-Binding Instrument for Corporate Accountability

Recent years have seen a growing push among environmental and other NGOs for the adoption of a legally binding instrument at the global level to regulate TNC activities with a view to ensuring good social and environmental performance. The idea of a global framework treaty on corporate accountability was floated by a number of groups in the run-up to the WSSD, including Friends of the Earth International, Greenpeace, the World Development Movement, Christian Aid, and the Alliance for a Corporate-Free UN.³¹ These groups argued that a legally binding international treaty is especially important in an era when so many TNCs are operating at a truly global level, as it is often difficult to ascertain the “home” country of certain transnational corporations.

The Friends of the Earth International (FOEI) has put forward a detailed proposal for a legally binding instrument for corporate accountability. This proposal calls for the following:

- Legal rights for citizens to hold corporations accountable to the broader public and the environment, rather than the present framework where corporations are only legally accountable to shareholders.
- A requirement for corporations to fully report their social and environmental impacts and for effective prior consultation with affected communities before embarking on activities which might have social and environmental implications.
- The extension of corporations’ liability to their directors when there is a breach of national environmental or social laws, and an extension of liability to directors and corporations for breaches of international laws and agreements.
- Rights of redress for citizens
- Community rights to control and access to resources
- Minimum environmental, social, labor and human rights standards.
- Corporations that breach these new duties would be subject to certain sanctions, such as fines and suspension of stock exchange listings.³²

30. FOE Netherlands 2002.

31. CEO 2001, 6.

32. FOEI 2001; Phillips 2002; and Bruno and Karliner 2002b.

All of these measures would give important rights to communities in developing countries in particular that may not have legal structures that would enable them to sue corporations or demand compensation from corporations, or where they lack rights to their own natural resources.

Greenpeace International also introduced its “Bhopal Principles on Corporate Accountability” in 2002. These principles are named after the chemical accident at a Union Carbide plant at Bhopal, India, in late 1984 which claimed lives of thousands of people. Though initially introduced as a set of voluntary principles, Greenpeace clearly sees this initiative as the first step toward a legally binding international treaty on corporate accountability. The Bhopal Principles are similar to the FOEI proposal, and include measures to ensure that corporations follow key principles of the Rio Declaration, including those on liability, double standards, the precautionary principle and the polluter pays principle. It also calls for extension of corporate liability beyond the home country of the corporations, including responsibility for cleanup and restoration in the case of environmental damage.³³

It is not surprising that industry is firmly opposed to the idea of a legally binding treaty on corporate accountability, especially one that places such a strong emphasis on the need to extend corporate liability for any damages caused by their operations. Although at the BASD endorsed the idea of promoting corporate responsibility and to some extent accountability at WSSD, it also stressed that its endorsement “. . . refers to existing agreements and is not a call for a new international regime.”³⁴ Instead of placing emphasis at the international level through an externally based treaty, industry has argued that the most progress would be made if efforts were focused on enhancing industry initiatives and local level regulations, particularly in developing countries. As Sir Mark Moody-Stuart, chairman of the BASD and former CEO of Shell, states: “Global business is far from perfect, but the standards applied by international companies are almost always higher than those of purely domestic companies. To address global governance without addressing national and local governance will lead to disappointment.”³⁵

Those promoting a binding treaty for corporate accountability were disappointed that the treaty did not receiving a strong endorsement at the WSSD. Early drafts of the Johannesburg Plan of Implementation text prepared by the chair of the WSSD included a commitment to “launch negotiations for a multi-lateral agreement on corporate accountability.”³⁶ While there are some references to the need for corporate responsibility and accountability in the Plan, the final text did not include the commitment to pursue a treaty, and instead focused on promoting voluntary agreements. Its removal was, according to NGOs, the result of intense pressure from BASD. Some have charged that the BASD was

33. Greenpeace International 2002.

34. BASD 2002.

35. Moody-Stuart 2002, 121.

36. Cited in Graymore and Bunn 2002, 1.

formed primarily to lobby against the idea of a globally binding treaty once it was clear that environmental groups were going to push this idea at the WSSD. According to Corporate Europe Observatory, "There can be little doubt that the desire to oppose binding international regulations for corporations is a key motive behind the industry campaign towards WSSD."³⁷ However, the Johannesburg Plan of Action did call for the promotion of corporate accountability and corporate responsibility. This could be seen as an opening for further international level discussions on a legally binding instrument.³⁸ But at the same time the US government insisted, much like BASD's argument, that references to corporate accountability and responsibility in the Plan of Action referred only to existing agreements, and not a new treaty.³⁹

Conclusion

The failure to include a commitment to launch negotiations on a global treaty on corporate accountability in the WSSD documents was certainly a disappointment to those pushing the idea. A legally-binding, externally driven treaty which requires parties to enact laws designed to enforce environmental and social accountability on TNCs, no matter where they operate, has the potential to make an enormous difference to those communities currently facing negative impacts from TNCs. This is especially true for such communities in developing countries where the legal structures may not give them the right to make a claim against corporations that are causing environmental or social damage. The strong opposition to such a treaty on the part of industry and of key governments such as the US was in many ways to be expected. The NGOs pushing for the treaty no doubt knew this in advance of the WSSD. Their aim was likely to get the issue onto the international agenda, to foster debate about it, and to plant the seed of the idea for such a treaty for the future. The fact that they were able to get the issue onto the agenda and generate a high profile debate about it, plus the fact that industry felt the need to create a lobby group specifically to oppose the idea, suggests that there is indeed wide support for the notion of a legally-binding global treaty for corporate accountability. It is likely only a matter of time before the idea surfaces again.

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37. CEO 2001.

38. See WRI 2003, 129; and Global Policy Forum 2002.

39. Friends of the Earth International 2002.

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